

The opinion in support of the decision being entered
today was not written for publication and is
not binding precedent of the Board

Paper No. 12

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte CHAD PATTERSON and
JOEL A. SINGER

Appeal No. 2002-1087
Application 09/320,104

ON BRIEF

Before COHEN, ABRAMS and STAAB, Administrative Patent Judges.
STAAB, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 1, 3, 5, 6 and 9-11, the claims currently pending in the application.

Appellants' invention pertains to a pair of outsoles for golf shoes that are designed to improve traction of the golfer's feet as weight is shifted from the back foot to the forward foot as downswing of a golf club progresses. More particularly, the outsole of the golf shoe of the back foot is provided with flared portions on the medial side of the heel portion thereof, and the

outsole of the golf shoe of the forward foot is provided with flared portions on the lateral side of the heel portion, which flared portions provide enlarged ground engagement surfaces relative to the other sides of the heel portions to thereby enhance traction. Figures 2 and 3 show this concept applied to the golf shoes of a right handed golfer. More particularly, Figure 2 shows the bottom of the right shoe of a right handed golfer and includes flared regions 44' and 54' located on the medial side of the heel, and Figure 3 shows the bottom of the left shoe of a right handed golfer and includes flared regions 44 and 54 located on the lateral side of the heel. A further understanding of the invention can be derived from a reading of exemplary claims 10 and 11, which are reproduced in the appendix to appellants' brief.

The references relied upon by the examiner in the final rejection are:

Peterson	4,885,851	Dec. 12, 1989
Crowley et al. (Crowley)	5,806,209	Sep. 15, 1998
Hudson et al. (Hudson)	6,108,943	Aug. 29, 2000

Claims 1, 3, 5, 6 and 9-11 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Peterson in view of Crowley

and Hudson.

Reference is made to appellants' brief (Paper No. 10) and to the examiner's answer (Paper No. 11) for the respective positions of appellants and the examiner regarding the merits of this rejection.

Discussion

Exemplary independent claim 10 is directed to a pair of outsoles for right and left golf shoes comprising, a right outsole (Figure 2) and a left outsole (Figure 3). The right outsole (Figure 2) includes, *inter alia*, a heel having a centerline (48') defining medial and lateral side portions disposed on either side of the centerline, wherein

the medial side portion [56] of the heel including a flare comprising a first flare region [54'] having a laterally extending ground engagement surface and a second flare region [62'] having a ground engagement surface extending forward of the front surface [66'] of the lateral side portion [68] of the heel

The left outsole (Figure 3) includes, *inter alia*, a heel having a centerline (48) defining medial and lateral side portions disposed on either side of the centerline, wherein

the lateral side portion [43] of the heel including a flare comprising a first flare region [54] having a laterally extending ground engagement surface and a second flare region [62] having a ground engagement surface extending forward of the front surface [66] of the medial side portion [71] of the heel

Independent claims 1 and 6 contain similar limitations.

Peterson, the examiner's primary reference, is directed to shoesoles for the bottom of golf shoes wherein the shoesoles have strategically placed protrusions 22 for inhibiting slipping of the golfer's feet as he shifts his weight while swinging his club. More particularly, Peterson discloses (col. 3, lines 13-22):

The protrusions 22 on the bottom of the right foot shoe [Figure 1] are distributed along the inner [medial] side thereof and the protrusions on the bottom of the left foot shoe [Figure 2] are distributed along the outer [lateral] side of the left foot shoe. The reason for such distribution on the inner [medial] side of the right foot [Figure 1] and outer [lateral] side of the left foot [Figure 2] is that a right-hand golfer tends to shift his weight from right to left as he swings the club from right to left to thus cause penetration of the protrusions, the effect of which is to inhibit slipping.

In applying Peterson against the claims, the examiner contends, and appellants do not dispute, that the unnumbered extension on the right side of the heel of the Figure 1 right shoesole corresponds to the claimed laterally extending first flare region 54' of the right outsole, and that the unnumbered

extension on the right side of the heel of the Figure 2 left shoesole corresponds to the claimed laterally extending first flare region 54 of the left outsole. The examiner concedes that Peterson does not disclose or suggest providing second flare regions (*i.e.*, second flare regions 62' and 62) on the heels of the shoesoles, as now claimed. The examiner turns to Crowley and Hudson for a teaching of this feature.

Crowley pertains to an athletic shoe for a variety of sports, including tennis, racquetball, basketball, running, baseball, football, weightlifting, and walking (column 1, lines 11-14). Crowley's shoe includes a stabilization element 10 (see Figure 1) located on the medial side of the heel, said stabilization element including a portion positioned forward of the front edge of the lateral side of the heel. Crowley states that the stabilization element "...does not provide cushioning, but rather functions to contact the surface to aid in stabilizing the foot of some runners who exhibit a tendency to excessively pronate after heel strike." (Column 6, lines 1-4).

Hudson is directed to an improved article of footwear

specifically for use in the sport of tennis (column 2, lines 30-33). As succinctly stated in the abstract:

...[t]he article of footwear is asymmetrical and the lateral and medial portions have features to performs different functions to enhance flexibility, balance control, propulsion, stability and support in the specific areas where needed. In part, the medial portion of the article of footwear is designed to provide flexibility while the lateral portion is designed to create stability. These differences in the medial and lateral portions of the article of footwear exist in the upper, e.g., lacing system, material composition, and material thickness differences, and/or in the sole

Based on these teachings, the examiner concludes that it would have been obvious to one of ordinary skill in the art to provide second flare regions extending forward of the already existing first flare regions of Peterson in order to enhance flexibility, balance control, propulsion, stability and support.

The examiner's conclusion that it would have been obvious to one of ordinary skill in the art in view of Crowley and Hudson to modify the shoesoles of Peterson in the manner proposed to arrive at the claimed subject matter is unsound. Peterson, like appellants, have provided a specific design for a golf shoe in an effort to overcome a problem specific to the game of golf (i.e.,

inhibiting slipping as the golfer shifts his weight while swinging his club). In so doing Peterson, again like appellants, have provided a shoesole design wherein the medial portion of the right shoe is different from the medial portion of the left shoe and wherein the lateral portion of the right shoe is different from the lateral portion of the left shoe. In contrast to this, the teachings of Crowley and Hudson are seen as providing shoes that comprise similar medial portions and similar lateral portions, which design would simply not provide the sort of benefit sought by Peterson or appellants (i.e., inhibiting slipping of a golfer's feet during downswing).¹

In this light, it is apparent that the only suggestion for modifying Peterson's shoesoles for golf shoes in the manner proposed by the examiner stems from hindsight knowledge impermissibly derived from appellants' disclosure.

Accordingly, we shall not sustain the standing 35 U.S.C. §

¹It is worth noting that golf shoes are conspicuously absent from Crowley's disclosure at column 1, lines 11-14, of the types of shoes the design thereof may be applied to, and that Hudson's shoes are specifically designated for use in the sport of tennis.

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103 rejection of claims 1-20.

The decision of the examiner is reversed.

No time period for taking any subsequent action in
connection with this appeal may be extended under 37 CFR
§ 1.136(a).

REVERSED

IRWIN CHARLES COHEN)	
Administrative Patent Judge)	
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NEAL E. ABRAMS)	BOARD OF PATENT
Administrative Patent Judge)	APPEALS AND
)	INTERFERENCES
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)	
LAWRENCE J. STAAB)	
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LJS/dpl

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